

**OPINION
75-115**

December 8, 1975 (OPINION)

Ms. Carole Peterson
Secretary and Member
Board of Examiners on
Audiology and Speech Pathology
3009 Walnut
Grand Forks, ND 58201

Dear Ms. Peterson:

In your letter of October 30, 1975, you set forth the following:

The Board of Examiners on Audiology and Speech Pathology desires your written opinion regarding the usage of the term "Certified Hearing Aid Audiologist". It has been called to the Board's attention that the term is being used in an advertising capacity by certain hearing aid dealers.

North Dakota Century Code Section 43-33-12 provides in pertinent part:

GROUNDS FOR SUSPENSION OF LICENSE.

* * *

4. Unethical conduct. Unethical conduct means:

* * *

- e. Representing that the service or advice of a person licensed to practice medicine used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true, or using the word "doctor", "clinic", "audiologist" or similar words, abbreviations, or symbols which tend to connote the medical or audiological profession when such is not accurate, except that the designation of "Certified Hearing Aid Audiologist" may be used when certification thereof has been conferred by and is in good standing with the national hearing aid society.

* * * * (Emphasis added)

The above cited section has its origin in the 1969 and 1971 Session Laws.

North Dakota Century Code Section 43-37-02(3) provides:

"Audiologist" means an individual who practices audiology and who represents himself to the public by any title or description of services incorporating the word audiologist, hearing clinician, hearing therapist, or any similar title or

description of service. No person may use the term "audiologist" in referring to himself unless he meets all the requirements of this chapter pertaining to audiology. (Emphasis added)

North Dakota Century Code Section 43-37-03 provides in part:

LICENSE REQUIRED - EXCEPTIONS. No person shall practice or represent himself as an audiologist or speech pathologist in this state unless he is licensed in accordance with the provisions of this chapter. However, nothing in this chapter shall be construed to prevent or restrict:

* * *

2. A hearing aid dealer from engaging in testing of hearing and other practices and procedures used solely for the fitting and selling of hearing aids in this state as provided in chapter 43-33;

* * * * (Emphasis added)

Both Sections 43-37-02 and 43-37-03 were the result of legislation adopted by the North Dakota Legislative Assembly in 1975.

Section 43-37-03 prohibits a person from practicing as an audiologist and prohibits a person from representing himself as an audiologist, unless licensed under Chapter 43-37. The prohibitions are absolute with the exception of those exemptions listed. So far as hearing aid dealers are concerned, there is the limited exemption from the prohibition regarding the practice of audiology. There is no exemption of hearing aid dealers from the provisions of Chapter 43-37 regarding representation as an audiologist. Therefore, since the legislature chose to deal in this chapter with hearing aid dealers and did exempt them from the absolute prohibition of certain audiological practices, but it did not exempt them from the prohibition on making representations of themselves as audiologists, except upon appropriate Chapter 43-37 licensure, we conclude that the legislature has prohibited hearing aid dealers from representing themselves in any manner as audiologists unless they are also licensed as audiologists pursuant to Chapter 43-37.

We further conclude that the title "Certified Hearing Aid Audiologist" may be used by a person licensed in accordance with Chapter 43-37 and who meets the additional requirements set down by Section 43-33-12(4) (e): that certification has been conferred by and is in good standing with the National Hearing Aid Society.

Therefore in specific response to your question, we are of the opinion that only those hearing aid dealers who are licensed audiologists pursuant to Chapter 43-37 and are appropriately certified by the National Hearing Aid Society may use the designation of "Certified Hearing Aid Audiologist."

Sincerely,

ALLEN I. OLSON

Attorney General